A

PP

v.

BASERI ISMAIL

B

HIGH COURT MALAYA, KUANTAN
AKHTAR TAHIR JC
[CRIMINAL TRIAL NO: 45A-22-2010]
12 JANUARY 2011

C

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39(B)(1)(a) - Whether defendant guilty of trafficking dangerous drugs - Whether established - Evidence tendered by both parties - Accused leading to discovery of drugs - Whether incriminating to accused - Effect of - Evidence Act 1950, s. 8*

D

CRIMINAL LAW: *Dangerous drugs - Trafficking in dangerous drugs - Evidence adduced - Evaluation of - Whether accused in possession of drugs at material time - Defence of - Whether an afterthought - Dangerous Drugs Act 1952, s. 39B(1)(a)*

EVIDENCE: *Accomplice - Evidence of - Uncorroborated evidence - Factors to consider - Whether accepted*

E

EVIDENCE: *Adverse inference - Failure of prosecution to call a witness - Whether material witness - Evaluation of facts and evidence - Whether prosecution's failure to call witness had been deliberate - Effect of - Whether adverse inference drawn for prosecution's failure to call her - Evidence Act 1950, s. 114(g)*

F

EVIDENCE: *Documentary evidence - Weight - Discrepancy in gross weight of drugs stated by the chemist and investigating officer - Effect of - Whether discrepancy so great that it raised a doubt to the identity of drugs seized*

G

EVIDENCE: *Exhibit - Unbroken chain of events - Whether satisfied*

EVIDENCE: *Presumption - Drug trafficking - Whether rebutted by accused*

The accused was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') for trafficking in dangerous drugs. A raid was
H conducted in a house at Taman Mahkota, Kuantan ('said house') on 26 March 2010. As a result of the said raid, dangerous drugs were found. All the occupants of the said house were arrested and brought to the police station wherein a police report on the arrest together with a search list and handover list was prepared and a marking of all the
I suspected drug packets was carried out. The evidence of the raid on the said house was corroborated by a member of the raiding team, SP8,

whilst the evidence of the chief raiding officer ('SP5') in relation to the search of the room where the drugs had been found had been corroborated by another occupant in the said house, SP6 and SP8. SP7 testified that the said house where the raid had occurred had belonged to her but that she had rented it to the accused. At the police station, SP5 handed over the arrested persons together with the drugs seized to the Investigating Officer, SP9. SP9 in turn, sent the suspected drugs to the Chemistry Department wherein the suspected drugs were confirmed to be cannabis as defined under the Act. At the end of the prosecution's case, the accused was called to enter his defence. The gist of the accused's testimony was that the drugs found had actually belonged to SP6 as he had seen the latter carrying a red plastic bag into the house. This he claimed had also been witnessed by his girlfriend, Marliana. The accused further denied that he had shown the police where the drugs had been recovered.

Held (finding the accused guilty of the charge; convicting him and sentencing him to death):

(1) The most incriminating evidence against the accused had been that he had led to the discovery of the drugs found. Despite the denial of the accused of having shown the place where the drugs had been found, SP5's testimony would be believed as he had come across as an honest witness. Further, SP5's testimony had been corroborated by both SP8 and SP6 who had also appeared to be honest witnesses. The conduct of the accused in showing the place where the drugs had been found was relevant under s. 8 of the Evidence Act 1950. Since the accused showed the exact location of where the drugs could be found, the minimum inference made was that he had knowledge of the presence of the drugs in the rack and this fact had been strengthened by the fact that the said house had been tenanted to him. Further, SP6 had given evidence that the accused not only had knowledge but also had control of the drugs and that SP6 often bought the drugs from him. (paras 15-17 & 21)

(2) SP6 was an accomplice. Thus, his uncorroborated evidence would be accepted cautiously. His demeanour had been observed carefully and there had not been a single instance where he had been found or suspected of telling lies. The spontaneous manner in which he had answered questions had also lent credence to this fact. (paras 21-23)

(3) The accused's evidence that the drugs belonged to SP6 had clearly been an afterthought and that it had only been hatched after he had been called to enter his defence. The accused's allegation that he had seen SP6 carrying a red plastic bag into the house had never

A been raised during the prosecution's case and no questions had been posed on this matter to SP6 nor to the other police officers who had testified in this case . Thus, there had not been a doubt that at the material time, only the accused had been in possession of the drugs found. (paras 26-27)

B **(4)** Although insufficient effort had been made by the prosecution to produce Marliana in court, this lack of effort had not been deliberate but more a result of the inaptitude of the police. Marliana had not been a material witness for the purposes of this case although she could have been a material witness for the packets of drugs found C in the living room. There had not been any reason for the police to have protected this witness and in fact she had been arrested together with the accused. The only assistance she could have rendered to the defence would have been to confirm that SP6 had carried a red plastic bag into the house, but since this defence had D already been dismissed as an afterthought, her evidence would not have helped the defence's case. Thus, no adverse inference could be drawn for the non-production of this witness. (paras 28-32)

(5) The drugs that had been seized by the police from the rack in the room above, sent to the chemist and finally tendered in court had E been the same. The markings of the police officers and the chemist had been discernible and accurate. (para 35)

(6) With regard to the discrepancy between the gross weight as determined by the Investigating Officer and the chemist, the F explanation had been the weighing scales used by these two authorities. There had not been any evidence that the police's weighing scale had been calibrated whereas the weighing scale of the Chemistry Department had been regularly calibrated. The correct weight had been that as ascertained by the chemist and the G discrepancy had not been that great to have raised a doubt as to the identity of the drugs seized. (paras 36-37)

(7) There had been sufficient evidence against the accused to prove possession of drugs and the presumption of trafficking had arisen by virtue of the presumption under the Act. The accused had failed H to rebut this presumption on a balance of probabilities and he had been intent on merely disputing possession. Thus, the presumption of trafficking had been deemed proven beyond a reasonable doubt. Proof of trafficking in this case had been further bolstered by the evidence of SP6 that he had bought drugs from the accused before. I (paras 38-39)

Case(s) referred to:
Alaggandiran Vellu v. PP [2010] 4 CLJ 410 CA ***(refd)***
Amathevelli P Ramasamy v. PP [2009] 3 CLJ 109 FC ***(refd)***
Ghazalee Kassim & Ors v. PP [2008] 4 CLJ 431 CA ***(foll)***
PP v. Mohd Azam Basiron & Anor [2010] 9 CLJ 1 CA ***(refd)***
Samundee Devan Muthu Kerishnan v. PP [2010] 3 CLJ 269 FC ***(refd)***
Yusri Pialmi v. PP [2010] 4 CLJ 828 CA ***(foll)***

Legislation referred to:
Evidence Act 1950, s. 8

For the appellant - Bob Arumugam; M/s Bob S Arumugam & Co
For the respondent - Ahmad Fadhli Mahmud DPP

Reported by Sharmini Pillai

JUDGMENT

Akhtar Tahir JC:

[1] The accused in this case was charged as follows:

> Bahawa kamu bersama-sama pada 26hb Mac 2010, jam lebih kurang 1.30 pagi, di alamat No. 53, Jalan Mahkota Jaya, Taman Mahkota, Batu 11, Jalan Gambang Kuantan, di dalam daerah Kuantan, di dalam negeri Pahang, dengan niat umum bersama telah didapati mengedar (1) beg plastik warna merah bertanda 'Terima Kasih' berisi (1) ketulan mampat tumbuhan kering disyaki ganja yang dibaluti dengan foil aluminium, (1) ketulan mampat tumbuhan kering disyaki ganja yang dibaluti plastik lutsinar dan (7) peket plastik setiap satu berisi ketulan mampat tumbuhan kering disyaki ganja. Jumlah keseluruhan (berat kasar) 764.1 gram. Dengan itu, kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 (Akta A 1025) (Pindaan 1998) dan boleh dihukum di bawah Seksyen 39B(2) Akta yang sama dan dibaca bersama Sek. 34 Kanun Keseksaan.

[2] The substance of the evidence in this case was provided by Inspector Izham Abd Wahab (SP5) who was the chief raiding officer for a raid which was conducted at the premise no. 53, Lorong Mahkota Jaya, Taman Mahkota, Jalan Gambang, Kuantan on 26 March 2010.

[3] According to SP5 the raid was conducted as a result of information received by him on the day in question. On arriving at the suspected premise at around 1.30am SP5 and his team of raiding officers conducted a surveillance of about five to ten minutes whereby they noticed that the light in one of the rooms on the first floor was on.

A **[4]** SP5 then went to the front door and knocked on the door whereupon it was opened by the accused. SP5 and some of his team members entered the house and saw a Malay lady by the name of Marliana present in the living room. SP5 then noticed two plastic packets of suspected drugs lying on the floor.

B **[5]** When questioned the accused led SP5 and a few of his raiding team to the first floor where he pointed to a rack. On searching the rack SP5 found packets of cannabis the subject of matter of the charge in this case. SP5 also noticed another Malay man sleeping in the room. This Malay man was later identified as Mohd Saiful bin Zaharuddin C (SP6).

[6] All the three occupants of the house were arrested by SP5 and brought to the Police Station where SP5 lodged a report of the arrest as well as prepared a search list and a handover list apart from marking D all the suspected drug packets.

[7] The evidence of the raid at the said premise by SP5 was corroborated by another member of the raiding team SM Afandi bin Othman (SP8). Whereas the evidence of SP5 in relation to the search of the room where the drugs were found was not only corroborated by E SP8 but also by SP6.

[8] Another witness called by the prosecution Rozianawati bt Yusof (SP7) testified that the premise where the raid occurred belonged to her but she had rented the premise to the accused.

F **[9]** At the Police Station SP5 handed over the arrested persons as well as the drugs seized to the investigating officer Inspector Yunus bin Muhammad (SP9). One of the noted investigations by SP9 was to send the suspected drugs to the chemist at the Chemistry Department Pahang. At the Chemistry Department the drugs were received by Suriani Mat G Yasin (SP3).

[10] SP3 conducted tests on the suspected drugs and confirmed that the drugs seized was cannabis as defined under the Dangerous Drugs Act 1952 with a weight of 762.41 gms.

H **[11]** At the end of the prosecution case I was satisfied that the prosecution had proven a *prima facie* case against the accused. I directed the accused to defend himself on the charge against him whereby the accused chose to give evidence under oath.

I

[12] The gist of the accused's testimony was that the drugs found actually belonged to SP6 as he had seen SP6 carrying a red plastic bag to the house. Marliana, his girl friend had also seen SP6 carrying the red plastic to the house. The accused also denied that he had shown the Police the place the drugs were recovered.

[13] I also took note of the fact that the accused wanted to call Marliana as his witness but this witness could not be produced by the prosecution although the prosecution had offered this witness to the defence.

Decision At The End Of The Case

[14] At the end of the case the prosecution has to proof their case beyond all reasonable doubt and in my opinion the prosecution had done so for the following reasons:

Possession By The Accused

[15] In this case the most incriminating evidence against the accused is that he led police to the discovery of the drugs found. On this matter despite the denial of the accused of having shown the place where the drugs were found, I chose to believe the testimony of SP5 as he came across to me as an honest witness.

[16] More important was that the testimony of SP5 on this matter was corroborated by SP8 and SP6. Both SP8 and SP6 appeared to be honest witnesses and I had no doubt as to their testimony although the competence of SP6 as a witness could be questioned and I will discuss this further on.

[17] The conduct of the accused showing the place where the drugs were found is relevant under s. 8 of the Evidence Act 1950.

[18] Case law has indicated that conduct of the accused is an important consideration to be taken into account. For purposes of illustration I will just rely on two cases ie, *Samundee Devan Muthu Kerishnan v. PP* [2010] 3 CLJ 269 and *Amathevelli P Ramasamy v. PP* [2009] 3 CLJ 109.

[19] In *Samundee*'s case it was stated as follows:

> Counsel then attacked the judgment of the Court of Appeal on the ground that the judgment seems to revolve around the conduct of the appellant. In relation to this, he referred to pp. 506-507 of the judgment of the Court of Appeal where Abdul Malik Ishak JCA, in delivering the judgment of the court, dealt with the conduct of the appellant just before he was arrested as follows:

A (a) 'the first conduct' - when the appellant stopped at the motorcar, he was seen 'looking to the left, to the right and to the front and at the same time turning his head to the left and to the right';

(b) 'the second conduct' - when PW7 and L/Kpl Appasamy rushed to the appellant and PW7 introduced himself as 'police', the B appellant 'looked shocked and attempted to run away';

(c) 'the third conduct' - because of the squeaky noise made by the shoes worn by PW7 and L/Kpl Appasamy, the appellant saw PW7 and 'looked surprised and his face turned pale'.

C We cannot see any merits in this argument. The learned judge was merely laying the factual matrix at the close of the prosecution's case based on the evidence adduced which also included the following:

(a) That before the appellant opened the boot of the motorcar he was 'behaving suspiciously';

D (b) That the appellant had a set of keys and had used one of the keys to open the boot of the motorcar;

(c) That the appellant then took out a red plastic package inclusive of its contents and held it in his right hand and was seen walking away from the motorcar;

E (d) Then when PW7 and L/Kpl Appasamy rushed toward the appellant and PW7 introduced himself as 'police', the appellant attempted to run away with the red plastic bag but was apprehended 'and he behaved as per the second conduct and as per the third conduct';

F (e) That when the appellant was asked to open the boot of the motorcar by the police, PW7 discovered four more plastic packages which contained the subject matter of the second charge.

G Consequent to laying down the factual matrix discussed above, the learned judge of the Court of Appeal said:

> Those were the facts and the circumstances of the case as adduced by the prosecution. We merely reproduce them without any addition or subtraction. Our approach is in accord H with the decision of this court in *Basil bin Omar v. Public Prosecutor* [2002] 4 CLJ 418; [2003] 1 MLJ 192. Each of the conduct of the accused when taken separately may appear neutral but when taken together they gave rise to the inference that the accused was aware of the contents of the red plastic package that he was carrying in his right hand as well as the I drugs that were found in the boot of the blue Honda Civic. We must not forget that when PW7 and his colleague went to the car park of Flat 'C', it was entirely based on the information

> pertaining to the theft of a stolen motor vehicle. No information was received in regard to a drug related offence. Both PW7 and his colleague must have least expected to arrest the accused for being in physical possession of the drugs. We are entitled to take into account the damning conduct of the accused before he was arrested.

We are also of the view that the contemporaneous conduct of the appellant in attempting to run away when PW7 identified himself as 'police' is relevant and admissible pursuant to s. 8 of the Evidence Act 1950 under the circumstances of the instant appeal. Such conduct is of course not to be taken in isolation but together with all the other circumstances of the case. That would be the correct approach to circumstantial evidence (see *Chan Chwen Kong v. PP* [1962] 1 LNS 22).

[20] In *Amathevelli*'s case the learned CJ (Malaya) stated as follows:

The inadmissibility of the information supplied by the appellant does not affect the admissibility of the evidence of her subsequent conduct under s. 8 of the Evidence Act irrespective of s. 27. As Chinnappa Reddy J said in *Prakash Chand v. State* AIR SC 400 at p. 404:

> The evidence of the circumstances, *simpliciter*, that an accused person led a police officer and pointed out the place where stolen articles or weapon which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously will or antecedent to such conduct falls within the purview of section 27 of the Evidence Act (*vide Himachal Pradesh Administration v. Om Prakash* AIR [1972] SC 975).

The evidence of conduct of the appellant in this case are as follows:

(a) Bringing the police team to her house;

(b) Using the key attached to the chain that she was searing to open the cupboard;

(c) Taking out a folded green blouse from the cupboard; and

(d) Taking out from the blouse a folded handkerchief containing P40 and P44A-F which belonged to the deceased.

[21] Taken in the light of the accused showing the exact location place where the drugs were found the minimum inference that can be made is that he had knowledge of the presence of the drugs in the rack and this fact is strengthened by the fact that the house itself was tenanted by the accused.

[22] Further evidence that the accused not only had the knowledge, but also had custody and control of the drugs was shown by the evidence of SP6. In his testimony SP6 had graphically stated that on the date of the raid he had seen the accused cutting the drugs and packing the drugs. Further SP6 stated that he had often bought drugs from the accused.

[23] This brings to fore the status of SP6 as a witness. There is no doubt in my mind that SP6 as shown by his testimony is clearly an accomplice. As a matter of prudence I have warned myself in accepting the evidence of SP6 uncorroborated. I further took the precaution of watching the demeanour of SP6 very carefully and in my observation of SP6 I could not find a single instance where I found or suspected that SP6 was telling lies. The spontaneous manner in which SP6 answered questions lends credence to this fact.

[24] How evidence of an accomplice should be treated, was given in the case of *Alaggandiran Vellu v. PP* [2010] 4 CLJ 410 as follows:

> There is no doubt that SP7 is an accomplice. The trial judge did in fact make a positive finding that SP7 was an accomplice. SP7 did go to the scene with Agilan. He prevented SP3 from living any assistance to the deceased when he was being stabbed by the accused. SP7 also assaulted the deceased with a piece of wood. He had been arrested by the police as a suspect and then released.
>
> It is a rule of prudence that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. We are satisfied that his evidence is sufficiently corroborated by SP3's evidence and credence must be given. SP3 and SP7 were at the scene and both had the opportunity to witness the accused stabbing the deceased. Furthermore, the pathologist's findings support SP7's evidence that the deceased was stabbed with a knife. We have no reason to interfere with the trial judge's finding that SP7 was a credible witness. He stated in his judgment as follows:
>
> > Walaupun SP7 seorang rakan jenayah, saya mendapati ia seorang yang boleh dipercayai dan keterangannya adalah disokong oleh SP3, iaitu seorang saksi bebas. Keterangan SP7 bahawa simati telah ditikam dengan sebilah pisau juga adalah 'consistent' dengan kecederaan yang dialami oleh simati seperti yang telah diterangkan oleh SP9 didalam keterangan lisannya dan juga didalam laporan bedah siasatnya.
> >
> > Tidak dinafikan bahawa terdapat percanggahan keterangan di antara SP3 dan SP7, termasuk bagaimana dan dengan siapa OKT pergi ke tempat kejadian dan jarak kedudukan masing-masing dengan tempat simati ditikam oleh OKT. Bagaimanapun saya mendapati percanggahan tersebut adalah percanggahan yang kecil dan tidak material. Ini tidak langsung menjejaskan

> kredibiliti mereka atau menimbulkan keraguan mengenai siapa yang menikam dan jenis senjata yang digunakan (emphasis added).

[25] In the case of *PP v. Mohd Azam Basiron & Anor* [2010] 9 CLJ 1 it was stated as follows:

> If we may add, even before reaching the stage of considering the question of corroboration and its adequacy, a presiding judge in the first place needs to decide whether that accomplice is a reliable witness or not. If he is not, the matter ends there, as his evidence has to be rejected, even if the prosecution can adduce evidence capable of being construed as corroboration (*Director of Public Prosecutions v. Kilbourne* [1973] 1 All ER 440). In a given set of facts, an accused person may be convicted premised on an accomplice's uncorroborated testimony pursuant to s. 133 of the Evidence Act 1950, as corroboration is not required as a rule of law. The requirement of corroboration is required only as a rule of practice and prudence (*Tinit & Ors v. PP* [1964] 1 LNS 210; *Bhuboni Sahu v. King* [1949] AIR 257). In a given situation too where there exists no corroboration, a corroborative warning is required to be administered by the court to itself though the format is not fixed (*Jegathesan v. PP* [1978] 1 LNS 74). It is only in rare instances a trial judge will convict an accused person upon the uncorroborated evidence of an accomplice (*TN Nathan v. PP* [1977] 1 LNS 127). If corroboration is needed implying that the accomplice has passed the hurdle of reliability, such corroboration must be independent and relates to material particulars pertaining to the accused person's culpability (*R v. Baskerville* [1916] 2 KB 658).

[26] Comparing the evidence of the prosecution witnesses against the testimony of the accused's testimony it is glaringly clear that the evidence of the accused that the drugs belonged to SP6 is clearly an afterthought and only hatched after the accused was called to enter his defence. This is clear from the fact that the allegation of the accused that he had seen SP6 carrying a red plastic bag into the house was never raised during the prosecution case and more specifically no questions were posed on this matter to SP6 and the other police officers testifying in this case.

[27] The sum total of the evidence in this case left no doubt in my mind that at the material time it was only the accused who was in possession of the drugs found.

Non-Calling Of Witness

[28] The defence in this case sought to invoke an adverse inference against the prosecution for the failure to produce a witness by the name of Marliana who was found together with the accused. In this case although I found that there was insufficient effort made by the

prosecution to produce this witness in the court, I was nevertheless satisfied that this lack of effort was not deliberate but more a result of inaptitude of the police.

[29] Under this circumstances whether an adverse inference can be drawn to me depends on whether this witness not called was a material witness and could have affected the outcome of this case. In my reading of the evidence I concluded this witness Marliana was not a material witness for the purpose of this case although she could have been a material witness for the packets of drugs found in the living room.

[30] The drugs found in this case were solely a result of them being pointed out by the accused and when the accused pointed out the drugs, Marliana was not even present in the room above. The absence of Marliana in the room above was borne out by the testimony of the evidence of two raiding police officers as well as SP6. SP5 further explained that although the search list seems to indicate that Marliana was present during the search above she was in fact not present. I had no reason to disbelieve the evidence of the prosecution witnesses on this matter. There was no reason for the police to protect this witness and in fact she was arrested together with the accused.

[31] Further the only assistance Marliana could have rendered to the defence was to confirm that SP6 carried a red plastic bag into the house as the accused was at pains to state that Marliana also saw this red plastic bag. Since I had already dismissed this defence as an afterthought as it was never raised during the prosecution's case Marliana's evidence would not have helped the defence case.

[32] No adverse inference therefore could be drawn for the non-production of this witness. On coming to this conclusion I took guidance from the cases of *Yusri Pialmi v. PP* [2010] 4 CLJ 828 and *Ghazalee Kassim & Ors v. PP* [2008] 4 CLJ 431.

[33] In *Yusri*'s case it was stated as follows:

> In *Mansor Md Rashid*, *supra*, Chong Siew Fai CJ (S&S) (as he then was) held that the drawing of adverse inferences pursuant to s. 114(g) is not a matter of an inflexible rule but depends on the circumstances of each particular case. The question to consider is whether the existence of a fact or state of things makes the existence of another fact or state of things so likely that it may be presumed to exist. The answer must naturally vary according to the circumstances, the nature of the fact required to be proved and its importance in the controversy, the usual and commonly recognized mode of proving it, and the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned. Hence, no adverse inferences should be drawn against the prosecution for the non-production of two

persons *viz* Cholar and Amran there, as they were not material to the point in issue, as the basis of the prosecution's case to substantiate the charge was on the 'sale of cannabis resulting from negotiations.'

Section 114(g) may however be invoked eg, in *Tan Kok An*, *supra*, where an important witness, the 'umbilical cord to link the accused with the heroin', and another person Sow Kiong, whom the prosecution had featured in cross-examining the accused, were not called as prosecution witnesses: per Abdul Malik Ishak J (now JCA).

[34] In *Ghazalee*'s case it was stated as follows:

In Malaysia, s. 114(g) of the Evidence Act 1950 provides that the court may presume the existence of certain facts and that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it. However, this adverse inference can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence: per Mohamed Azmi SCJ (as he then was) in *Munusamy*, *supra.*

The unchallenged evidence adduced in the trial court reveals that the prosecution has made an attempt to bring Ah Meng to court as a witness but it was a fruitless exercise. The prosecution has merely failed to obtain evidence. There is no withholding or suppression of evidence. Hence, no adverse inference can be invoked against the prosecution under s. 114(g).

I therefore do not feel able to sustain the defence contention herein. The answer to the above question is in the negative.

Break In The Chain Of Evidence

[35] In this case I was satisfied that the drugs seized by the police from the rack in the room above, sent to the chemist and finally tendered in court were the same drugs. I was satisfied that all marking of the police officers and the chemist were discernable and accurate as had been testified by the witnesses.

[36] As to the issue of a discrepancy between the gross weight as determined by the investigating officer and the chemist, the explanation lies no further than the weighing scale used by these two authorities. There was no evidence that the weighing scale of the Police was calibrated as testified by the investigating officer whereas the weighing scale of the Chemistry Department was regularly calibrated as testified by the Chemist.

[37] I was satisfied that the correct weight was as ascertained by the chemist and the discrepancy was not that great to raise a doubt to the identity of the drugs seized.

A **Trafficking**

[38] In this case, as I was satisfied that there was sufficient evidence against the accused to prove possession of the drugs the presumption of trafficking arose by virtue of the presumption under the Dangerous Drugs Act by virtue of the weight of the drugs.

B

[39] The accused had a duty to rebut this presumption on a balance of probabilities but he failed to do so completely as he was intent on just disputing possession. The presumption of trafficking therefore had been deemed to be proven beyond reasonable doubt. In this case the

C proof of trafficking was further bolstered by the evidence of SP6 that he had bought drugs from the accused before.

[40] Adding up all the evidence in this case, I was satisfied beyond reasonable doubt that the accused was guilty of the charge against him and I therefore convicted him and sentenced him to the only available

D sentence of death.

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